Fiscal Note 2011 Biennium

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Bill #	HB0249	**Title:**	Tax perpetual conservation easements - publicly owned are taxable
Primary Sponsor:	Stahl, Wayne	**Status:**	As Introduced

- ☐ Significant Local Gov Impact
- ☑ Needs to be included in HB 2
- ☑ Technical Concerns
- ☐ Included in the Executive Budget
- ☐ Significant Long-Term Impacts
- ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2010 Difference	FY 2011 Difference	FY 2012 Difference	FY 2013 Difference
Expenditures:				
General Fund	$14,268,109	$800,000	$800,000	$800,000
State Special Revenue	$0	$13,508	$14,481	$15,490
Revenue:				
General Fund	$0	$553,304	$581,990	$610,675
State Special Revenue	$0	$34,752	$36,553	$38,355
Net Impact-General Fund Balance:	($14,268,109)	($246,696)	($218,010)	($189,325)

Description of fiscal impact:

This bill requires conservation easement interests that are granted into perpetuity to be valued and taxed as class four property. The bill would make all conservation easement interests held by the either the public sector (state, local governments) or private entities (whether or not they are operated for profit) taxable.

FISCAL ANALYSIS

Assumptions:

Department of Revenue

1. Under current law, conservation easement interest is not valued. The language in the bill indicates that the land subject to the conservation easement will continue to be taxed based upon the restricted purposes for which the property is used.
2. Section 3 of the bill strikes the exemption language in 76-6-208, MCA, which makes the interest held by a public body or qualifying private organization in a conservation easement, exempt from taxation. This fiscal note assumes this creates a tax on only those easements held in perpetuity although the statutory definition applies to those easements held for a term of years as well (see technical notes).

3. Since the bill makes the owner's interest in the conservation easement held in perpetuity taxable apart from the valuation of land, this fiscal note assumes the market valuation of this interest will need to be assessed and maintained separately.
4. Current information from the DOA Base Map Service Center indicates approximately 1,500 easements in the state covering a total of 1,809,500 acres. According to records, 95% or 1,425 of these conservation easements are held in perpetuity.
5. According to a 2007 Legislative Audit Division (LAD) "Conservation Easement – Performance Report" dated January 2007, 99% of conservation easements were found to be privately owned.
6. From 2000 to 2007 the report notes that approximately 80 new conservation easement agreements are established annually. Assuming 95% of these are easements held in perpetuity and using an average size of 1,271 acres, the estimated new acreage annually is 96,596 (80 X .95 X 1,271). The estimated total acreage under conservation easements for TY 2009 through TY 2012 would be:

Total Conservation Easment Acreage

Tax Year	2007	2008	2009	2010	2011	2012
Acreage	1,573,411	1,670,007	**1,766,603**	**1,863,199**	**1,959,795**	**2,056,391**

7. The report notes that the Montana Department of Fish, Wildlife and Parks (FWP) is the second largest holder of conservation easements in the state with 377,747 acres. The report estimates the agency's average cost for conservation easement acquisitions through 2005 has been $157 per acre.
8. Using the FWP value as a measure of the market value for conservation easements held in perpetuity, and assuming the property would be classified as residential and receive the homestead exemption, the following table provides an estimate of the taxable value and taxes for conservation easements if they were taxed as Class 4 property with the state equalization tax rate of 95.53 and 6 mills for the university system. These revenue flows would begin in TY 2010 (FY 2011).

Total Estimated State Property Tax Revenue from HB 249

Fiscal Year	2010	2011	2012	2013
Acreage	1,766,603	1,863,199	1,959,795	2,056,391
Value per acre		$157	$157	$157
Market Value		$292,522,243	$307,687,815	$322,853,387
Taxable Market Value		$193,064,680	$203,073,958	$213,083,235
Taxable Value		$5,791,940	$6,092,219	$6,392,497
State Mill Revenues		$553,304	$581,990	$610,675
University Mill Revenues		$34,752	$36,553	$38,355
Total State Revenue		**$588,056**	**$618,543**	**$649,030**

9. The DOR would need to contract out appraisals to Fee appraisers in order to comply with the general assessment day of January 1, 2010. Fee appraisers charge approximately $10,000 to $15,000 per appraisal and take approximately 14 days to complete an appraisal. For purposes of this fiscal note, $10,000 is used. The DOA Base Map Service Center indicates that there are 1,500 conservation easements of which 95% or 1,425 are held in perpetuity. The contracted services costs to appraise these existing easements is estimated at $14,250,000 (1,425 existing easements X $10,000 per easement) The estimated costs for contracted services for appraising the additional 80 new conservation easements annually is $800,000 (80 X $10,000).
10. The current ORION property information system has the information necessary to create the records and assess the holders of easements. However, new ownership records for these easement interests would have

to be created so that assessments and tax bills are sent to the easement holders. This results in new workload creating and entering records for all 1,425 estimated existing conservation easements held in perpetuity. The department estimates that it will take 30 minutes per easement parcel to create the individual records for those easements. This effort would have to be completed prior to January 1, 2010. To complete this task in 6 months, and based upon a 2,080 hour work year, (1,040 hours for a half year) the department would have to hire 1 administrative assistant for the period. (1,425 easements X 30 minutes/easement = 42,750 minutes ÷ 60 minutes/hour = 712 hours; 712 hours ÷ 1040 hours = 1 Tax Technician I (this number is rounded). The personal services salary cost for the 1 FTE is calculated at $23,000 (1 FTE for six months = $11,500 salary for FY 2010). Total personal services would be $17,211 plus $898 in operating costs for FY 2010. The department would not have additional costs for adding the estimated 80 new easements per year during the FY 2011 through FY 2013 period.

Property Taxes Paid by State Agencies

11. The State, as owner of an estimated 0.4% of conservation easement land, would bear a property tax expense under this bill. The potential tax liability by state agency was not available for this fiscal note. Local taxes are estimated using the TY 2008 average statewide local mills of 436.25 and applying an annual mill growth rate of 2.67%, the estimated impact on local government revenues and total state property tax liability is provided in the following table:

Total Estimated State Property Tax Expense Under HB 249

Fiscal Year	**2010**	**2011**	**2012**	**2013**
Acreage	1,766,603	1,863,199	1,959,795	2,056,391
Taxable Value	$5,925,290	$6,225,568	$6,525,847	$6,826,125
Local mills	436.35	448.00	459.96	472.24
Local Revenue		$2,789,058	$3,001,643	$3,223,591
State Revenue		$588,056	$618,543	$649,030
Total Property Tax		$3,377,114	$3,620,185	$3,872,621
State Share		0.4%	0.4%	0.4%
State Property Tax Expense		**$13,508**	**$14,481**	**$15,490**

12. The agencies anticipated to own land subject to this bill are the Department of Natural Resource and Conservation; the Montana Department of Transportation; and the Department of Fish, Wildlife and Parks. These agencies are funded primarily with state special revenue, it is assumed any property tax liability under this bill would be paid out of these funds

	FY 2010 Difference	FY 2011 Difference	FY 2012 Difference	FY 2013 Difference
Fiscal Impact:				
Department of Revenue				
FTE	0.50	0.00	0.00	0.00
Expenditures:				
Personal Services	$17,211	$0	$0	$0
Operating Expenses-Contract Services	$14,250,000	$800,000	$800,000	$800,000
Operating Expenses	$898	$0	$0	$0
TOTAL Expenditures	$14,268,109	$800,000	$800,000	$800,000
Funding of Expenditures:				
General Fund (01)	$14,268,109	$800,000	$800,000	$1,000,000
Revenues:				
General Fund (01)	$0	$553,304	$581,990	$610,675
State Special Revenue (02)	$0	$34,752	$36,553	$38,355
TOTAL Revenues	$0	$588,056	$618,543	$649,030
State Agencies				
Expenditures:				
Operating Expenses	$0	$13,508	$14,481	$15,490
Funding of Expenditures:				
State Special Revenue (02)	$0	$13,508	$14,481	$15,490
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($14,268,109)	($246,696)	($218,010)	($389,325)
State Special Revenue (02)	$0	$21,244	$22,072	$22,865

Effect on County or Other Local Revenues or Expenditures:

1. Using the TY 2008 average statewide local mills of 436.25 and applying an annual mill growth rate of 2.67%, the estimated impact on local government revenues is provided in the following table:

Total Estimated Local Property Tax Revenue Under HB 249

Fiscal Year	2010	2011	2012	2013
Acreage	1,766,603	1,863,199	1,959,795	2,056,391
Taxable Value	$5,925,290	$6,225,568	$6,525,847	$6,826,125
Local mills	436.35	448.00	459.96	472.24
Local Revenue		$2,789,058	$3,001,643	$3,223,591

2. Local jurisdictions would have additional expenditures associated with maintaining the necessary information on these easements for purposes of taxation

Technical Notes:

1. This bill would apply to conservation easements held in perpetuity and not those held for a term of years.
2. The bill would create a new tax on a non-possessory interest since it would add conservation easements held in perpetuity into the definition in 15-6-134, MCA of Class 4 property.
3. This bill would continue to tax easement land held in perpetuity using current valuation methods based upon the restricted purposes for which the property is used and add an additional tax for the conservation easement interest. This may raise a concern of double-taxation.
4. The bill language does not address how a delinquency regarding non-payment of the tax bill by the conservation easement holder would be handled.
5. This bill applies to tax years beginning after December 31, 2009, or tax year 2010. In order to complete the appraisal of the easements prior to January 1, 2010, funding would be needed as of July 1, 2009.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*